The Baltimore Sun Company *and* Washington-Baltimore Newspaper Guild, Local 35. Case 5–CA–27814

April 7, 2000

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

Pursuant to a charge filed on July 9, 1998,[1] the General Counsel of the National Labor Relations Board issued a complaint on January 14, 2000, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's clarification of the bargaining unit in Cases 9-UC–429 and 9-UC–430 (formerly Cases 5-UC–344 and 5-UC–348). (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer, with affirmative defenses, admitting in part and denying in part the allegations in the complaint.

On March 8, 2000, the General Counsel filed a Motion for Summary Judgment. On March 10, 2000, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On March 10, 2000, the Charging Party filed a Memorandum in Support of the General Counsel's Motion for Summary Judgment. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer the Respondent admits its refusal to bargain based on its disagreement with the Board's decision in the underlying unit clarification case.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.[2]

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Maryland corporation with an office and place of business in Baltimore, Maryland, has been engaged in the business of publishing a daily newspaper.

During the 12-month period preceding issuance of the complaint, the Respondent, in the conduct of its business operations, derived gross revenues in excess of $200,000. During this same period the Respondent held memberships in, or subscribed to, various news services including the Associated Press and advertised various nationally sold products such as Dell Computers.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Clarification Proceeding

On December 11, 1997, a Decision and Clarification of Bargaining Unit issued in Cases 9–UC–429 and 9–UC–430 (formerly Cases 5–UC–344 and 5–UC–348), wherein the unit was clarified to include:

> All employees employed in the SunSpot (website) department, including the secretary to the web publisher, but excluding all freelance artists, and all professional employees, guards, the web publisher, the sales manager, the web community relations and content manager, the web production manager and all other supervisors as defined in the Act.

Since approximately 1949, and at all material times herein, the Respondent has recognized the Union as the exclusive collective-bargaining representative of the employees in the unit described below, and this recognition has been embodied in a series of collective-bargaining agreements the most recent of which is effective by its terms from June 23, 1999, to June 24, 2003. The unit, as set out in the complaint, is the employees of the Respondent described in article I, section 1.1, section 1.2, and

[1] In its answer, the Respondent states that it is without knowledge and information sufficient to form a belief as to the date of filing of the charge. Under Sec. 102.20 of the Board's Rules, such statement operates as a denial. The Respondent has also denied the complaint allegation that it was served with the charge. The General Counsel has attached as an exhibit to his Motion for Summary Judgment a copy of the charge, the Regional Director's letter of transmittal of the charge, and the affidavit of service, which establish that the charge was filed on July 9, 1998, and served on July 10, 1998. The Respondent has not contested the authenticity of these documents. Accordingly, we find that the Respondent's denials raise no material issue of fact warranting a hearing.

[2] Member Hurtgen concurred in part and dissented in part from the denial of the Respondent's Request for Review in the underlying representation case. While he continues to be of the view that review was warranted, in part, he agrees that the Respondent has not presented any new matters which would warrant denial of the Motion for Summary Judgment.

section 1.3 of the collective-bargaining agreement. This is a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.[3] The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

On or about December 22, 1997,[4] the Union, by letter, requested the Respondent to meet and bargain concerning the terms and conditions of employment of the SunSpot department employees who were included in the unit pursuant to the clarification proceeding as described here, and, since on or about January 12, 1998, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after January 12, 1998, to meet and bargain with the Union as the exclusive collective-bargaining representative of the SunSpot department employees who were included in the appropriate unit pursuant to the clarification proceeding, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

ORDER

The National Labor Relations Board orders that the Respondent, The Baltimore Sun Company, Baltimore, Maryland, its officers, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Washington-Baltimore Newspaper, Guild, Local 35 as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, recognize and bargain with the Union as the exclusive representative of the following employees, as part of the recognized appropriate unit and, if an understanding is reached, embody the understanding in a signed agreement:

> All employees employed in the SunSpot (website) department, including the secretary to the web publisher, but excluding all freelance artists, and all professional employees, guards, the web publisher, the sales manager, the web community relations and content manager, the web production manager and all other supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Baltimore, Maryland, copies of the attached notice marked ''Appendix.''[5] Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 12, 1998.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. April 7, 2000

Sarah M. Fox, Member

Wilma B. Liebman, Member

Peter J. Hurtgen, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[3] The Respondent's answer denies that art. 1, sec. 1.2 describes the unit or an appropriate unit but admits the remaining portion of the complaint unit description. In the underlying unit clarification case, the Regional Director found that sec. 1.2 provides that the Union's jurisdiction "shall include new or additional work of a permanent nature in departments covered by the contract." Neither the Respondent's answer nor its response provides elucidation on its denial of the complaint allegation. Rather, the response makes clear that the Respondent's refusal to bargain is based on what it contends is the Board's "improper *application* of the legal standard governing accretions in Case 9–UC–430." (Emphasis added). Thus, the issue in this proceeding is the status of the employees in the SunSpot department, and the Respondent's denial with respect to sec. 1.2 does not raise an issue warranting a hearing.

[4] The December 22, 1999 date as stated in the complaint is corrected to read December 22, 1997, consistent with the Motion for Summary Judgment.

[5] If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Washington-Baltimore Newspaper Guild, Local 35 as the exclusive representative of the employees in the bargaining unit as clarified by the National Labor Relations Board.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL NOT, on request, recognize and bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees set forth below as part of the recognized appropriate unit:

> All employees employed in the SunSpot (website) department, including the secretary to the web publisher, but excluding all freelance artists, and all professional employees, guards, the web publisher, the sales manager, the web community relations and content manager, the web production manager and all other supervisors as defined in the Act.

THE BALTIMORE SUN COMPANY